

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK SMSA LIMITED PARTNERSHIP d/b/a
VERIZON WIRELESS, NEW CINGULAR WIRELESS
PCS, LLC, SPRINT SPECTRUM L.P., and OMNIPOINT
COMMUNICATIONS, INC., a wholly owned subsidiary
of T-MOBILE USA, INC.,

Case No. 07 CV 7637
(Brieant, J.)
(Yanthis, M.J.)

Plaintiffs,

-against-

THE TOWN OF CLARKSTOWN and THE TOWN
BOARD OF THE TOWN OF CLARKSTOWN,

Defendants.

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ANSWER

Electronically Filed

Defendants THE TOWN OF CLARKSTOWN and THE TOWN BOARD OF THE
TOWN OF CLARKSTOWN, by their attorneys, ROSENBERG CALICA & BIRNEY LLP,
answer the Complaint for Declaratory and Injunctive Relief (the "Complaint") as follows:

1. Admit the allegations contained in paragraph 1 thereof to the extent they describe the nature of this action, deny that the action is meritorious and deny each and every remaining allegation contained in paragraph 1 of the Complaint.
2. Deny the allegations contained in paragraph 2 thereof, except admit that Chapter 251 of the Clarkstown Town Code ("Chapter 251") was properly enacted as land use legislation. Defendants respectfully refer to Chapter 251 which speaks for itself.
3. Deny each and every allegation contained in the first sentence of paragraph 3 thereof. With respect to the remaining allegations contained in paragraph 3 of the Complaint, respectfully refer to Chapter 251 which speaks for itself and deny all allegations to the extent that

they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

4. Neither admit nor deny the allegations contained in paragraph 4 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law. To the extent the allegations contained in paragraph 4 of the Complaint purport to interpret Chapter 251, defendants refer to Chapter 251 which speaks for itself and deny all allegations to the extent that they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

5. To the extent the allegations contained in paragraph 5 thereof purport to interpret Chapter 251, defendants refer to Chapter 251 which speaks for itself and deny all allegations to the extent that they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 5 of the Complaint.

6. Deny each and every allegation contained in paragraph 6 thereof.

7. Deny each and every allegation contained in paragraph 7 thereof.

8. Deny each and every allegation contained in paragraph 8 thereof.

9. Deny each and every allegation contained in paragraph 9 thereof.

10. Neither admit nor deny the allegations contained in paragraph 10 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law and/or are inconsistent with Chapter 251. Defendants refer to

Chapter 251 which speaks for itself and deny all allegations to the extent that they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

11. Deny each and every allegation contained in paragraph 11 thereof to the extent they allege that plaintiffs are entitled to relief.

12. Deny each and every allegation contained in paragraph 12 thereof.

13. Admit the allegations contained in paragraph 13 thereof.

14. Admit the allegations contained in paragraph 14 thereof.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 thereof.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 thereof.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 thereof.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 thereof.

19. Neither admit nor deny the allegations contained in paragraph 19 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

20. Neither admit nor deny the allegations contained in paragraph 20 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of

law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

21. Neither admit nor deny the allegations contained in paragraph 21 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 thereof.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 thereof.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 thereof.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 thereof.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 thereof.

27. With respect to the allegations contained in paragraph 27 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

28. Admit that plaintiffs have attached a copy of what purports to be the text of Chapter 251 to the Affidavit of John E. Barry, Esq. and respectfully refer to Chapter 251 for the

contents thereof. Deny each and every remaining allegation contained in paragraph 28 of the complaint.

29. With respect to the allegations contained in paragraph 29 thereof, respectfully refer to the referenced statute which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

30. To the extent the allegations contained in paragraph 30 thereof purport to interpret the referenced statute, defendants respectfully refer to said statute which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 30 of the Complaint.

31. Admit that 47 U.S.C. § 253 ("Section 253") was enacted as part of the Telecommunications Act of 1996. With respect to the remaining allegations contained in paragraph 31 of the Complaint, respectfully refer to the referenced statute which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

32. With respect to the allegations contained in paragraph 32 thereof, respectfully refer to Section 253 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

33. Neither admit nor deny the allegations contained in paragraph 33 thereof on the

basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

34. Deny each and every allegation contained in paragraph 34 thereof.

35. Neither admit nor deny the allegations contained in paragraph 35 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer is required, deny the allegations to the extent they conflict with law

36. Neither admit nor deny the allegations contained in paragraph 36 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

37. With respect to the allegations contained in paragraph 37 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

38. With respect to the allegations contained in paragraph 38 thereof, respectfully refer to Chapter 251 which speaks for itself, deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

39. With respect to the allegations contained in paragraph 39 thereof, respectfully refer to Chapter 251 which speaks for itself, deny the allegations to the extent they may be

inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

40. Deny each and every allegation contained in paragraph 40 thereof.

41. With respect to the allegations contained in paragraph 41 thereof, respectfully refer to Chapter 251 which speaks for itself, deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

42. With respect to the allegations contained in paragraph 42 thereof, respectfully refer to Chapter 251 which speaks for itself, deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

43. With respect to the allegations contained in paragraph 43 thereof, respectfully refer to Chapter 251 which speaks for itself, deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully and fairly set forth all of the applicable provisions contained in such statute.

44. Deny each and every allegation contained in paragraph 44 thereof concerning defendants' alleged motives in enacting Chapter 251. With respect to the remaining allegations contained in paragraph 44 of the Complaint, respectfully refer to Chapter 251 which speaks for itself, deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully and fairly set forth all of the applicable provisions contained in such statute.

45. Deny each and every allegation contained in paragraph 45 thereof.

46. Deny each and every allegation contained in paragraph 46 thereof.

47. Admit that the Planning Board has the authority, inter alia, to approve site plans and make recommendations concerning zoning and planning matters to the Clarkstown Town Board and/or the Clarkstown Zoning Board. Deny each and every remaining allegation contained in paragraph 47 of the Complaint.

48. With respect to the allegations contained in paragraph 48 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

49. With respect to the allegations contained in paragraph 49 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

50. With respect to the allegations contained in paragraph 50 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

51. With respect to the allegations in paragraph 51 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

52. With respect to the allegations in paragraph 52 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent

therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

53. Deny each and every allegation contained in paragraph 53 thereof.

54. Neither admit nor deny the allegations contained in paragraph 54 thereof on the basis that said paragraph contains no factual allegations, and respectfully refers all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

55. Deny each and every allegation contained in paragraph 55 thereof.

56. Neither admit nor deny the allegations contained in paragraph 56 thereof on the basis that said paragraph contains no factual allegations, and respectfully refers all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

57. Neither admit nor deny the allegations contained in paragraph 57 thereof on the basis that said paragraph contains no factual allegations, and respectfully refers all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

58. To the extent that the allegations contained in paragraph 58 thereof purport to interpret and/or quote from Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 58 of the Complaint.

59. To the extent that the allegations contained in paragraph 59 thereof purport to

refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 59 of the Complaint.

60. With respect to the allegations contained in paragraph 60 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

61. Neither admit nor deny the allegations contained in paragraph 61 thereof to the extent that such paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent that the allegations contained in paragraph 61 of the complaint purport to interpret and/or quote from Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 61 of the Complaint.

62. To the extent that the allegations contained in paragraph 62 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 62 of the Complaint.

63. To the extent that the allegations contained in paragraph 63 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny

the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 63 of the Complaint.

64. With respect to the allegations contained in paragraph 64 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

65. To the extent that the allegations contained in paragraph 65 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 65 of the Complaint.

66. To the extent that the allegations contained in paragraph 66 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 66 of the Complaint.

67. To the extent that the allegations contained in paragraph 67 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 67 of the Complaint.

68. With respect to the allegations contained in paragraph 68 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

69. To the extent that the allegations contained in paragraph 69 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 69 of the Complaint.

70. To the extent that the allegations contained in paragraph 70 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 70 of the Complaint.

71. Deny each and every allegation contained in paragraph 71 thereof.

72. Deny each and every allegation contained in paragraph 72 thereof.

73. Deny each and every allegation contained in paragraph 73 thereof.

74. Deny each and every allegation contained in paragraph 74 thereof.

75. To the extent that the allegations contained in paragraph 75 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every

remaining allegation contained in paragraph 75 of the Complaint.

76. With respect to the allegations contained in paragraph 76 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

77. To the extent that the allegations contained in paragraph 77 thereof purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 77 of the Complaint.

78. Deny each and every allegation contained in paragraph 78 thereof.

79. Admit that Section 332(c)(3) of the Communications Act was enacted in or about 1993. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 78 of the Complaint and respectfully refer to the referenced statute and legislative history which speak for themselves.

80. Deny each and every allegation contained in paragraph 80 thereof.

81. With respect to the allegations contained in paragraph 81 thereof, respectfully refer to the referenced statute which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

82. Neither admit nor deny the allegations contained in paragraph 82 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions

of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

83. Neither admit nor deny the allegations contained in paragraph 83 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

84. To the extent that the allegations contained in paragraph 94 thereof purport to interpret and/or quote from Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegation contained in paragraph 84 of the Complaint.

85. To the extent that the allegations contained in paragraph 85 of the Complaint purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provision contained in such statute. Deny each and every remaining allegation contained in paragraph 85 of the Complaint.

86. Neither admit nor deny the allegations contained in paragraph 86 thereof to the extent that such paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law. To the extent that the allegations contained in paragraph 86 of the Complaint purport to refer to Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny

that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

87. Deny each and every allegation contained in paragraph 87 thereof.

88. Deny each and every allegation contained in paragraph 88 thereof.

89. Neither admit nor deny the allegations contained in paragraph 89 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

90. Neither admit nor deny the allegations contained in paragraph 90 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

91. Neither admit nor deny the allegations contained in paragraph 91 thereof on the basis that the said allegations contain no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

92. With respect to the allegations contained in paragraph 92 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

93. With respect to the allegations contained in paragraph 93 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be

inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

94. Deny each and every allegation contained in paragraph 94 thereof.

95. Deny each and every allegation contained in paragraph 95 thereof.

96. With respect to the allegations contained in paragraph 96 thereof, respectfully refer to the referenced statute which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in the statute.

97. Neither admit nor deny the allegations contained in paragraph 97 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

98. Neither admit nor deny the allegations contained in paragraph 98 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

99. With respect to the allegations contained in paragraph 99 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in the statute.

100. With respect to the allegations contained in paragraph 100 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be

inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in the statute.

101. With respect to the allegations contained in the first sentence of paragraph 101 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in the statute. Deny each and every remaining allegation contained in paragraph 101 of the Complaint.

102. With respect to the allegations contained in paragraph 102 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in the statute.

103. With respect to the allegations contained in paragraph 103 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in the statute.

104. With respect to the allegations contained in paragraph 104 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in the statute.

105. Deny each and every allegation contained in paragraph 105 thereof.

106. Deny each and every allegation contained in paragraph 106 thereof.

107. Deny each and every allegation contained in paragraph 107 thereof.

108. Neither admit nor deny the allegations contained in paragraph 108 thereof to the extent that such paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law. To the extent that the allegations contained in paragraph 108 of the Complaint purport to refer to Sections 302a and 303 of the Communications Act, defendants respectfully refer to the referenced statute which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny each and every remaining allegations contained in paragraph 108 of the Complaint.

109. Neither admit nor deny the allegations contained in paragraph 109 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

110. Neither admit nor deny the allegations contained in paragraph 110 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

111. Deny each and every allegation contained in paragraph 111 thereof.

112. To the extent that the allegations contained in paragraph 112 thereof purport to interpret and/or quote from Chapter 251, defendants respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such

statute. Deny each and every remaining allegation contained in paragraph 112 of the Complaint.

113. Deny each and every allegation contained in paragraph 113 thereof.

114. Neither admit nor deny the allegations contained in paragraph 114 thereof to the extent that such paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

115. Neither admit nor deny the allegations contained in paragraph 115 thereof to the extent that such paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

116. Neither admit nor deny the allegations contained in paragraph 116 thereof to the extent that such paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

117. Neither admit nor deny the allegations contained in paragraph 117 thereof to the extent that such paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

118. To the extent that the allegations contained in paragraph 118 thereof purport to refer to Chapter 251, defendants respectfully refer to the referenced statute which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute. Deny

each and every remaining allegation contained in paragraph 118 of the Complaint.

119. Deny each and every allegation contained in paragraph 119 thereof.

120. Deny each and every allegation contained in paragraph 120 thereof.

121. Deny each and every allegation contained in paragraph 121 thereof.

122. Neither admit nor deny the allegations contained in paragraph 122 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

123. Neither admit nor deny the allegations contained in paragraph 123 thereof on the basis that said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

124. With respect to the allegations contained in paragraph 124 thereof, respectfully refer to Chapter 251 which speaks for itself; deny the allegations to the extent they may be inconsistent therewith and deny that the allegations fully or fairly set forth all of the applicable provisions contained in such statute.

125. Neither admit nor deny the allegations contained in paragraph 125 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

126. Deny each and every allegation contained in paragraph 126 thereof.

ANSWERING COUNT ONE

127. With respect to the allegations in paragraph 127 thereof, repeat and reallege their previous answers to the preceding paragraphs of the complaint as if fully set forth hereat.

128. Neither admit nor deny the allegations contained in paragraph 128 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

129. Neither admit nor deny the allegations contained in paragraph 129 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

ANSWERING COUNT TWO

130. With respect to the allegations in paragraph 130 thereof, repeat and reallege their previous answers to the preceding paragraphs of the complaint as if fully set forth hereat.

131. Neither admit nor deny the allegations contained in paragraph 131 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they may conflict with law.

132. Neither admit nor deny the allegations contained in paragraph 132 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they may conflict with law.

133. Neither admit nor deny the allegations contained in paragraph 133 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

ANSWERING COUNT THREE

134. With respect to the allegations contained in paragraph 134 thereof, repeat and reallege their previous answers to the preceding paragraphs of the complaint as if fully set forth hereat.

135. Neither admit nor deny the allegations contained in paragraph 135 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

136. Neither admit nor deny the allegations contained in paragraph 136 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they conflict with law.

137. Deny each and every allegation contained in paragraph 137 thereof.

ANSWERING COUNT FOUR

138. With respect to the allegations in paragraph 138 thereof, repeat and reallege their previous answers to the preceding paragraphs of the complaint as if fully set forth hereat.

139. Neither admit nor deny the allegations contained in paragraph 139 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions

of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they may conflict with law.

ANSWERING COUNT FIVE

140. Deny each and every allegation contained in paragraph 140 thereof.

141. With respect to the allegations in paragraph 141 thereof, repeat and reallege their previous answers to the preceding paragraphs of the complaint as if fully set forth hereat.

142. Neither admit nor deny the allegations contained in paragraph 142 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they may conflict with law.

143. Neither admit nor deny the allegations contained in paragraph 143 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they may conflict with law.

144. Neither admit nor deny the allegations contained in paragraph 144 thereof on the basis that the said paragraph contains no factual allegations, and respectfully refer all questions of law to the Court. To the extent an answer to the allegations is required, deny the allegations to the extent they may conflict with law.

145. Deny each and every allegation contained in paragraph 145 thereof.

ANSWERING PRAYER FOR RELIEF

146. Deny each and every allegation contained in paragraph 146 thereof.

147. Deny each and every allegation contained in paragraph 147 thereof.

148. Deny each and every allegation contained in paragraph 148 thereof.

149. Deny each and every allegation contained in paragraph 149 thereof

150. Deny each and every allegation contained in paragraph 150 thereof.

151. Deny each and every allegation contained in paragraph 151 thereof.

152. Deny each and every allegation contained in paragraph 152 thereof.

153. Deny each and every allegation contained in paragraph 153 thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

154. The complaint, in whole or in part, fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

155. The claims, in whole or in part, are not ripe.


WHEREFORE, defendants Town of Clarkstown and the Town Board of the Town of Clarkstown demand judgment dismissing the Complaint in its entirety and granting defendants

such other and further relief as the Court deems just and proper, including costs and fees.

Dated Garden City, New York
October 4, 2007

Respectfully submitted,

ROSENBERG CALICA & BIRNEY LLP

By: 
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